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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

10 LEEDS LP, a California Limited Partnership, ) CASE NO. 08cv100-BTM (BLM)  
11 Plaintiff, )  
12 v. )  
13 UNITED STATES OF AMERICA, )  
14 Defendant. )  
15 )  
PLAINTIFF LEEDS LP'S OBJECTION TO  
DEFENDANT UNITED STATES OF  
AMERICA'S REQUEST FOR JUDICIAL  
NOTICE  
PRE-TRIAL DATE: July 27, 2010  
TIME: 2:00 P.M.  
COURTROOM: 15  
TRIAL DATE: August 16, 2010

16 Plaintiff LEEDS LP (“LEEDS”) hereby submits its objection to Defendant UNITED STATES OF  
17 AMERICA’s Request for Judicial Notice.

18       Subject to, and without waiver of, any evidentiary objections (e.g., relevance, undue prejudice, etc.),  
19 which plaintiff may assert at trial, LEEDS does not oppose defendant's request that this Court take judicial  
20 notice of the fact that Don and Susanne Ballantyne ("the Taxpayers") filed a petition in the United States  
21 Tax Court, Case No. 13255-94 (a copy of which was attached to defendant's Request for Judicial Notice).  
22 However, it is unclear from defendant's Request for Judicial Notice whether it requests this Court to also  
23 take judicial notice of the *contents* of said petition. LEEDS objects, in an abundance of caution and for the  
24 sake of clarity, to the extent defendant seeks judicial notice of the contents of the petition.

25 Defendant seeks judicial notice of the Taxpayers' petition pursuant to Federal Rule of Evidence  
26 ("FRE") 201 which governs judicial notice of adjudicative facts. FRE. 201(b) states: "A judicially noticed  
27 fact must be one not subject to reasonable dispute in that it is either (1) generally known within the  
28 territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to

1 sources whose accuracy cannot reasonably be questioned.” Although the fact that a petition was filed is  
 2 subject to judicial notice under such standard, its contents are not. In a case involving a taxpayer challenge  
 3 to an IRS collection action, the court held it was inappropriate for it to take judicial notice pursuant to FRE  
 4 201 of certain facts in a related litigation because such “facts” were not undisputed, but were merely  
 5 assertions made by parties in that litigation. *Lindley v Comm'r*, TC Memo 2006-229, 92 CCH TCM 363  
 6 (T.C. 2006); aff'd in part and vacated in part (on other grounds) by *Keller v. Comm'r*, 568 F.3d 710 (9th  
 7 Cir. 2009). See also, *United States v S. Cal. Edison Co.*, 300 F.Supp.2d 964 (E.D.Cal. 2004) (holding court  
 8 can only take judicial notice of existence of those matters of public record, existence of motion or of  
 9 representations having been made therein, but may not take judicial notice of veracity of arguments and  
 10 disputed facts contained therein; similarly, court may take judicial notice of existence of certain matters of  
 11 public record but may not take judicial notice of one party's opinion of how matter of public record should  
 12 be interpreted); *Britz Fertilizers, Inc. v. Bayer Corp.*, 665 F.Supp.2d 1142, 1176-1177 (E.D.Cal. 2009)  
 13 (holding that because various declarations, exhibits, and documents filed with the court are public records,  
 14 “judicial notice of these documents can be taken. However, to the extent that the contents of the documents  
 15 are disputed, *existence* of the documents is noted. [Emphasis added.]”)

16 Furthermore, it is inappropriate to take judicial notice of facts contained within a document where  
 17 the moving party fails to identify which facts should be judicially noticed. *Consejo de Desarrollo  
 18 Economico de Mexicali v United States*, 438 F.Supp.2d 1207 (D.C.Nev 2006), remanded on other grounds  
 19 2007 U.S.App. LEXIS 8166 (9th Cir. 2007) (holding when a party requested court to take judicial notice of  
 20 numerous documents, court took judicial notice of documents' existence pursuant to FRE 201, but it did not  
 21 take judicial notice of facts contained within documents where moving party did not identify facts  
 22 appropriate for judicial notice.” Here, defendant did not identify any facts within the Taxpayers' petition  
 23 appropriate for judicial notice, only that such a Petition was filed. Accordingly, this Court should only  
 24 notice the existence of the Petition, not its contents.

25 Dated: July 20, 2010

KAYE, ROSE & PARTNERS, LLP

26 By s/André M. Picciurro

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